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CyberSoft, Inc.
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EXAMINER

YIGDALL, MICHAEL J

ART UNIT	PAPER NUMBER
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2192

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,173

Applicant(s)

RADATTI, PETER V.

Examiner

Michael J. Yigdall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4 and 8-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment and response filed on June 6, 2005 has been fully considered. Claims 4 and 8-21 are pending.

Response to Arguments

2. Applicant's arguments with respect to the Pedrizetti reference (claims 4 and 8-21) have been considered but are moot in view of the new ground(s) of rejection.
3. Applicant's arguments with respect to the Aviani reference (claims 16 and 17) have been fully considered but they are not persuasive.

Applicant contends that Aviani nowhere teaches, suggests nor discloses the limitations of independent claim 8, and therefore cannot serve as an anticipatory reference for dependent claims 16 and 17 (Applicant's remarks, page 6, top).

Again, however, claims 16 and 17 are product-by-process claims for which patentability is determined based on the product itself and not on the method of production. See MPEP § 2113. In this case, patentability is determined based on the products recited in claims 16 and 17 ("data information" and "a cryptographic hash," respectively), and not on the method of production recited in claim 8. Aviani discloses "data information" (see, for example, column 6, lines 1-6) and "a cryptographic hash" (see, for example, column 6, lines 17-19) as noted below, and thus anticipates product-by-process claims 16 and 17.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 4 and 8-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claims contain subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Although the term “cryptographic hash” is disclosed in the specification (page 7, top and page 8, bottom), the new limitation that the cryptographic hash is “comprised of a unique data identifier” appears to lack support in the originally filed specification.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 8-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The language of the claims raises the question as to whether the claims are directed merely to abstract ideas that are not tied to a technological art, environment or machine that would result in a practical application producing a concrete, useful and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. A simple remedy to obviate the issue of

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non-statutory subject matter is to replace the term “method” with --computer-implemented method-- in the preamble of the claims.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 16 and 17 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,950,205 to Aviani, Jr. (art of record, “Aviani”).

With respect to claim 16 (original), Aviani discloses data information (see, for example, column 6, lines 1-5, which shows meta-information of a data object, i.e. data information).

With respect to claim 17 (currently amended), Aviani discloses a cryptographic hash (see, for example, column 6, lines 17-19, which shows an MD5 hash, i.e. a cryptographic hash).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claims 4 and 8-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,151,708 to Pedrizetti et al. (art of record, "Pedrizetti") in view of U.S. Pat. No. 6,493,871 to McGuire et al. (art of record, "McGuire").

With respect to claim 4 (currently amended), Pedrizetti discloses an apparatus for transmitting data to a target (see, for example, the abstract) comprising:

(a) a means for updating, present on a distribution media, and further comprising data, data information and a hash of said data information (see, for example, FIG. 1 and column 1, lines 41-65, which shows a system for updating software from a distribution server, comprising update data, information based on the update, and a hash table based on the information);

(b) a means for transmission between said distribution media and said target (see, for example, pathway 104 in FIG. 1 and column 2, lines 57-61, which shows a means for transmission between the server and client);

(c) a means for obtaining data information from said distribution media (see, for example, column 1, lines 52-56, which shows that update data information is obtained by the client from the distribution server); and

(d) a means for processing said hash of said data information (see, for example, FIG. 5 and associated text, and column 1, lines 48-59, which shows that the client processes the information to determine the availability of updates);

whereby said means for obtaining data information from said distribution media obtains said hash from said means for updating present on said distribution media, which hash is transmitted through said means for transmission to said means for processing, and which upon receipt of said hash of said data information compares said hash with said target in order to

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determine if said data should be transmitted to said target (see, for example, column 1, lines 48-59, which shows that the hash table and the update data information is transferred to the client for processing and is compared with the client to determine whether or not the actual update data should be transferred as well).

Although Pedrizetti discloses a hash that is transmitted to the client, as presented above (also see, for example, column 4, lines 51-58), Pedrizetti does not expressly disclose the limitation that the hash is a cryptographic hash and the limitation that the cryptographic hash is comprised of a unique data identifier.

However, McGuire teaches a similar apparatus for transmitting data to a target (see, for example, the abstract), including a cryptographic hash of data information that uniquely identifies and distinguishes different versions of a file (see, for example, column 9, lines 9-16). McGuire discloses comparing the cryptographic hash so as to exclude unneeded files (see, for example, column 9, lines 32-38) and minimize the amount of data transmitted to the target (see, for example, column 7, lines 24-56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Pedrizetti such that the hash is a cryptographic hash comprised of a unique data identifier, such as taught by McGuire, so as to minimize the amount of data transmitted to the client.

With respect to claim 8 (currently amended), Pedrizetti discloses a method for transmitting data to a target (see, for example, the abstract) comprising the steps of:

(a) transmitting a hash of data information from a first distribution media to said target (see, for example, column 1, lines 45-49, which shows that a hash table based on the update data information is transferred to the client from the distribution server);

(b) comparing said hash in order to determine if data information should be transmitted to said target (see, for example, column 1, lines 49-56, which shows that the hash table is compared with the client to determine whether or not additional information should be transferred as well);

(c) transmitting said data information from a second distribution media, if necessary, to said target (see, for example, column 1, lines 52-56, which shows that update data information is transferred to the client if needed; also see, for example, column 6, lines 14-17, which shows that a third-party server, i.e. a second distribution media, may be used);

(d) comparing said data information with said target in order to determine if said data should be transmitted to said target (see, for example, column 1, lines 52-59, which shows that the update data information is compared with the client to determine whether or not the actual update data should be transferred as well).

Although Pedrizetti discloses a hash that is transmitted to the client, as presented above (also see, for example, column 4, lines 51-58), Pedrizetti does not expressly disclose the limitation that the hash is a cryptographic hash and the limitation that the cryptographic hash is comprised of a unique data identifier.

However, McGuire teaches a similar method for transmitting data to a target (see, for example, the abstract), including a cryptographic hash of data information that uniquely identifies and distinguishes different versions of a file (see, for example, column 9, lines 9-16). McGuire discloses comparing the cryptographic hash so as to exclude unneeded files (see, for

example, column 9, lines 32-38) and minimize the amount of data transmitted to the target (see, for example, column 7, lines 24-56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Pedrizetti such that the hash is a cryptographic hash comprised of a unique data identifier, such as taught by McGuire, so as to minimize the amount of data transmitted to the client.

With respect to claim 9 (previously presented), the rejection of claim 8 is incorporated, and Pedrizetti also discloses the step of obtaining data information from said second distribution media (see, for example, column 1, lines 52-56, which shows that update data information is obtained by the client from the distribution server).

With respect to claim 10 (original), the rejection of claim 9 is incorporated, and Pedrizetti also discloses the limitation wherein the step of obtaining data information from said server further comprises the step of using an http address to obtain data information (see, for example, column 2, lines 61-65, which shows that an Internet connection may be used in conjunction with a Web browser for the software update system; also see, for example, FIG. 6A, which shows a Web browser using an HTTP address).

With respect to claim 11 (original), the rejection of claim 8 is incorporated, and Pedrizetti also discloses the limitation wherein the first and second distribution media are the same (see, for example, server 100 in FIG. 1, which shows the software update system using a single server).

With respect to claim 12 (original), the rejection of claim 8 is incorporated, and Pedrizetti also discloses the limitation wherein either the first and second distribution media at least partially comprises a network (see, for example, column 2, lines 57-58, which shows a server in communication with a client over a communications pathway, i.e. in a network).

With respect to claim 13 (original), the rejection of claim 8 is incorporated, and Pedrizetti also discloses the step of preparing said data information from attributes of said data (see, for example, column 5, lines 50-60, which shows an index file having update data information based on attributes of the actual update data, such as version number and package name; note that the step of preparing the index file is inherent to the system).

With respect to claim 14 (original), the rejection of claim 13 is incorporated, and Pedrizetti also discloses the limitation wherein said data comprises one or more software product data files (see, for example, column 1, lines 41-45, which shows that software program updates are transferred from the distribution server to the client).

With respect to claim 15 (currently amended), the rejection of claim 13 is incorporated, and Pedrizetti also discloses the step of preparing said cryptographic hash from said data information (see, for example, column 1, lines 45-48, which shows a hash table prepared from the update data information).

With respect to claim 16 (original), the rejection of claim 13 is incorporated, and Pedrizetti also discloses data information prepared by the method of claim 13 (see, for example,

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column 5, lines 50-60, which shows an index file having update data information based on attributes of the actual update data).

With respect to claim 17 (currently amended), the rejection of claim 15 is incorporated, and Pedrizetti also discloses a cryptographic hash prepared by the method of claim 15 (see, for example, column 1, lines 45-48, which shows a hash table prepared from the update data information).

With respect to claim 18 (original), the rejection of claim 8 is incorporated, and Pedrizetti also discloses the step of transmitting said data from a third distribution media to said target (see, for example, column 1, lines 56-59, which shows that update data is transferred to the client from the distribution server; also see, for example, column 6, lines 14-17, which shows that a third-party server, i.e. a third distribution media, may be used).

With respect to claim 19 (original), the rejection of claim 18 is incorporated, and Pedrizetti also discloses the limitation wherein the third distribution media at least partially comprises a network (see, for example, column 2, lines 57-58, which shows a server in communication with a client over a communications pathway, i.e. in a network).

With respect to claim 20 (original), the rejection of claim 19 is incorporated, and Pedrizetti also discloses the step of editing data on said target in order to update data on said target (see, for example, column 3, lines 29-41, which shows that data on the client is edited and updated).

With respect to claim 21 (currently amended), Pedrizetti discloses a method for transmitting data to a target (see, for example, the abstract) comprising the steps of:

(a) providing a software product (see, for example, column 1, lines 41-45, which shows that software program updates are provided on a server);

(b) preparing data information about said software product (see, for example, column 5, lines 50-60, which shows an index file having information based on the software update; note that the step of preparing the index file is inherent to the system);

(c) preparing a hash of data information about said software product (see, for example, column 1, lines 45-48, which shows a hash table prepared from the update data information);

(d) storing said software product on a first distribution media (see, for example, update data 114 in FIG. 1, which shows the software program update data stored on a server);

(e) storing said data information on a second distribution media (see, for example, column 6, lines 14-17, which shows that a third-party server, i.e. a second distribution media, may be used for storage);

(f) storing said hash of data information on a third distribution media (see, for example, column 6, lines 14-17, which shows that a third-party server, i.e. a third distribution media, may be used for storage);

(g) obtaining data information about said software product (see, for example, column 1, lines 52-56, which shows that information about the software updates is obtained by the client);

(h) transmitting said hash of data information to said target (see, for example, column 1, lines 45-49, which shows that a hash table based on the update data information is transferred to the client);

(i) comparing said hash in order to determine if data information should be transmitted to said target (see, for example, column 1, lines 49-56, which shows that the hash table is compared with the client to determine whether or not additional information should be transferred as well);

(j) transmitting said data information, if necessary, to said target (see, for example, column 1, lines 52-56, which shows that update data information is transferred to the client if needed);

(k) comparing said data information with said target in order to determine if said data should be transmitted to said target (see, for example, column 1, lines 52-59, which shows that the update data information is compared with the client to determine whether or not the actual update data should be transferred as well);

(l) transmitting said data, if necessary, to said target (see, for example, column 1, lines 56-59, which shows that update data is transferred to the client if needed); and

(m) editing said data on said target in order to update data on said target (see, for example, column 3, lines 29-41, which shows that data on the client is edited and updated).

Although Pedrizetti discloses a hash that is transmitted to the client, as presented above (also see, for example, column 4, lines 51-58), Pedrizetti does not expressly disclose the limitation that the hash is a cryptographic hash and the limitation that the cryptographic hash is comprised of a unique data identifier.

However, McGuire teaches a similar method for transmitting data to a target (see, for example, the abstract), including a cryptographic hash of data information that uniquely identifies and distinguishes different versions of a file (see, for example, column 9, lines 9-16). McGuire discloses comparing the cryptographic hash so as to exclude unneeded files (see, for

example, column 9, lines 32-38) and minimize the amount of data transmitted to the target (see, for example, column 7, lines 24-56).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Pedrizetti such that the hash is a cryptographic hash comprised of a unique data identifier, such as taught by McGuire, so as to minimize the amount of data transmitted to the client.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Yigdall whose telephone number is (571) 272-3707. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MY

Michael J. Yigdall
Examiner
Art Unit 2192

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SUPERVISORY PATENT EXAMINER